1999

Brookside Mobile Home Park LTD., v. Sam Peebles : Reply Brief

Utah Court of Appeals

Russell A. Cline; Crippen & Cline; Attorneys for Appellees.
Dennis K. Poole, John L. Adams; Poole, Sullivan & Adams; Attorneys for Appellant.

IN THE UTAH COURT OF APPEALS

BROOKSIDE MOBILE HOME PARK, LTD., a Utah Limited Partnership dba BROOKSIDE MOBILE HOME PARK, Plaintiff, Appellant, and Cross-Appellee, vs. SAM PEEBLES aka SAMUEL B. PEEBLES, an Individual; and HAROLD BOYD PEEBLES, an Individual, Defendants, Appellees, and Cross-Appellants.	Case No. 990518 Priority No. 15

APPEAL FROM THE JUDGMENT OF THE HONORABLE J. C. FRATTO, THIRD DISTRICT COURT ENTERED MAY 26, 1999

REPLY BRIEF OF APPELLEES

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ARGUMENT

The arguments contained in this Reply Brief are limited to those issues raised on Cross-Appeal by Defendants Sam Peebles and Harold Peebles.[1]

I. THE JURY ERRED IN FINDING THAT BROOKSIDE'S REFUSAL TO ALLOW MS. SOUTHWORTH TO SUBMIT AN APPLICATION FOR RESIDENCY WAS NOT UNREASONABLE

The jury erred in finding that Brookside's refusal to accept an application for residency from Ms. Southworth was not an

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[1] Appellant raises two new issues in its reply brief. Appellant first argues that "Sam Peebles refused to sign a written lease with Brookside, as required by the [Mobile Home Park Residency Act]," and therefore he should be denied "the benefits provided by the Act." (Appellant's Reply Brief at 10) (citation omitted). The record shows, however, that the only reason Sam Peebles declined to sign a third lease with the Park is because he had also signed two previous leases. (Question: "Did you refuse to sign a new lease?" Peebles: "I never was presented one. [Jim Prentice] asked me if I would sign one. I told him I don't see why I need to. I'm already paying rent and I'm already under a lease so I never was presented with one again." Sam Peebles Dep. At 36.) The record also shows that the jury found that Peebles had a written lease for space #100 that had never been surrendered. Moreover, because Appellant did not raise this issue below or in its initial brief to this Court, the issue is waived.

Appellant next argues that section 57-16-15.1 applies to this case. (Appellant's Reply Brief at 15.) That section, however, applies only to nonpayment of rent following a notice pursuant to section 57-16-6(2)(d), and to behavior that "substantially endangers" the "security and health" of other residents. The complaint did not seek evictions on section 57-16-6(2)(d) grounds. No notice pursuant to 57-16-6(2)(d) was served. And no evidence on this basis was presented at trial. In short, section 57-16-15.1 is inapplicable and, even if it was applicable, the issue is waived because Appellant failed to raise the issue below or in its initial brief to this Court.

"unreasonable withholding" of approval of residency under the Mobile Home Park Residency Act. As a matter of law, refusal to accept an application for residency from a prospective resident is a per se violation of section 57-16-4(4), which prohibits a mobile home park owner from "unreasonably withholding" approval for residency.

In its Reply Brief, Brookside does not dispute that Jim Prentice, the Brookside mobile home park manager, refused to accept an application for residency from Jackie Southworth or that he refused to meet with her. Ms. Southworth had made an appointment to meet with Jim Prentice, fill out an application for residency and review her financial information, among other things. When she arrived, Jim Prentice testified that he "told her she had been denied by the owner" and he sent her away. (T. at 616, lines 18-19.)

Brookside made the following arguments in its Reply Brief as to why the foregoing was not an "unreasonable withholding" of approval for residency within meaning of section 57-16-6. First, Brookside argued that Western Credit could not verify Ms. Southworth's employment income and therefore, presumably, Brookside had no duty to meet with Ms. Southworth or permit her to fill out an application. Second, Brookside claimed that Jim Prentice testified that he did not "see" Ms. Southworth's tax

returns with her at the time he advised her that she had been denied residency by the owner of the park. Third, Brookside contended that Peebles failed to preserve this issue at trial because Peebles did not introduce Ms. Southworth's tax returns into evidence. Finally, Brookside asserted that Peebles failed to sufficiently "marshal the evidence." None of these arguments is sufficient to refute Defendants' argument that Brookside's actions constituted an "unreasonable withholding" within the meaning of the Mobile Home Park Residency Act.

A. Western Credit's Inability To Verify Ms. Southworth's Employment Does Not Justify Brookside's Refusal To Allow Ms. Southworth The Opportunity To Submit Her Financial Information To Brookside

Brookside cites to portions of the trial transcript wherein Ms. Southworth acknowledges that Western Reporting was unable to verify her employment or her account with Utah First Credit.[2] Nevertheless, just because Western Credit was unable to verify Ms. Southworth's employment, Ms. Southworth should not have been prevented from submitting her financial information to Brookside. Ms. Southworth owned her own business. Ms. Southworth testified

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[2] "In the testimony of Ms. Southworth, she acknowledged that her credit report from Western Reporting states that Western Reporting was unable to verify her employment though the employment was at a company she owned." (Appellant's Reply Brief at 18) (citation omitted). "Ms. Southworth also acknowledged that her credit report from Western Reporting indicate [sic] that Western Reporting was unable to verify her account at Utah First Credit." Id. at 19 (citation omitted).

that "I would not allow any of my bank, or person[nel] to verify anything to anyone without [the] okay from me." (T. at 307, lines 23-24.) Because Ms. Southworth would not allow any of her banks or personnel to verify anything without her okay, she was prepared to "verify [her income] by tax returns at any time." (T. at 308, lines 4-5.) Furthermore, at the time Ms. Southworth went to meet with Jim Prentice, she had the credit information with her and she was prepared to discuss it with Jim Prentice:

> **Q.** You said that you'd had with you the credit information we looked at?
>
> **A.** Exactly.
>
> **Q.** And were you going to review that with [Jim Prentice]?
>
> **A.** Yes, I was, as well as fill out the application for the park.
>
> Q. Okay. And you didn't have an opportunity to do that?
>
> **A.** I never got my foot in the door.

(T. at 313, lines 10-18.)

Brookside makes the very point that Peebles is making. Western Credit could not verify Ms. Southworth's financial information. Ms. Southworth should have had the opportunity to provide Brookside her credit information. Ms. Southworth stood ready and willing to provide that credit information, but Ms. Southworth had already been "denied by the owner." It was unreasonable for Brookside to reject Ms. Southworth based solely

on Western Credit's lack of verification. It is undisputed that Jim Prentice refused to meet with Ms. Southworth, refused to take an application from Ms. Southworth, and refused to allow Ms. Southworth to present her financial information. Such behavior constitutes a per se "unreasonable withholding" of approval for residency under section 57-16-4(4) of the Mobile Home Park Residency Act.

B. Prentice's Testimony That He Did Not See Ms. Southworth's Tax Returns In Her Hand Is Irrelevant

Mr. Prentice's testimony that he did not see Ms. Southworth's tax returns in her hand is irrelevant. What Ms. Southworth may have had in her hand and what Mr. Prentice saw (or didn't see) in her hand is irrelevant since Ms. Southworth had already been "denied by the owner" as a resident of the mobile home park. (T. at 616, line 18.) Therefore, it is irrelevant what papers Ms. Southworth had with her since she had already been denied. Furthermore, because Jim Prentice refused to meet with Ms. Southworth, he had no opportunity to see what papers she had with her or what papers she could provide at a later time. Ms. Southworth also testified that she could "verify [her income] by tax returns at any time." (T. at 308, lines 4-5.)

C. Peebles Was Not Required To Tender Ms. Southworth's Tax Returns Into Evidence To Prove Brookside "Unreasonably Withheld" Approval For Residency Within The Meaning Of Section 57-16-6

Brookside argues that "[t]he Peebles did not tender Ms. Southworth's tax returns into evidence to rebut Brookside's basis for denying her application and so the issues [sic] has [sic] not been preserved on appeal." (Appellant's Reply Brief at 20.) Neither of these arguments is true.

i. The information on Ms. Southworth's tax returns is irrelevant

Brookside argues that "Pebbles did not tender Ms. Southworth's tax returns into evidence to rebut Brookside's *basis* for denying her *application*." (Appellant's Reply Brief at 20.) (Emphasis added). This argument makes no sense. First, Ms. Southworth was never permitted to fill out an application for residency; so there was no "*application*" to deny.

Second, the "*basis*" for Brookside denying Ms. Southworth the opportunity to fill out an application was Western Credit's inability to verify Ms. Southworth's employment. Alan Glover, the owner of the Park, testified that he had rejected Ms. Southworth because Western Credit had been "unable to verify employment." (T. at 70.)

Accordingly, the "*basis*" for Brookside rejecting Ms. Southworth had nothing to do with Ms. Southworth's tax returns or

other financial information. Ms. Southworth's tax returns were irrelevant. This is demonstrated by the fact that Brookside would not even consider Ms. Southworth's tax returns or other financial information. Brookside did not care. Ms. Southworth's income or assets did not matter to Brookside. Brookside's decision was based not on Ms. Southworth's actual financial condition, but on what Western Credit could "verify."

Furthermore, had Peebles tendered Ms. Southworth's actual tax returns, bank statements and financial statements into evidence at trial, as Brookside argues Peebles should have done, those documents would have been properly excluded as "irrelevant."

ii. Peebles was not required to tender Ms. Southworth's tax returns into evidence to preserve for appeal the issue of whether Brookside had "unreasonably withheld" approval

As discussed above, Peebles was not required to tender Ms. Southworth's tax return into evidence since that information was irrelevant to Brookside's rejection of Ms. Southworth. Brookside refused to even meet with Ms. Southworth or to review any of her financial information, be it tax returns or otherwise that she might have provided to them. Furthermore, Estate of Morrison v. West One Trust Co., 933 P.2d 1015 (Utah Ct. App. 1997), which

Brookside cites in its Reply Brief,[3] is inapposite. Estate of Morrison was an estate case. 933 P.2d at 1016 (providing background of case). It had nothing to with a mobile home park. Moreover, unlike Estate of Morrison, Defendants in this case have not "introduce[d] . . . entirely new arguments" on appeal. Id. at 1018. Rather, the issues which Defendants raise here and elsewhere have been preserved for appeal and they are therefore correctly before this Court.

D. Peebles Has Marshaled The Evidence

Finally, Brookside asserts that Pebbles has failed to marshal the evidence. This is not true. Peebles has marshaled the evidence. In its Opposing Memorandum, Brookside has failed to cite a single piece of evidence that is inconsistent with Peebles' theory of this case. It is undisputed that Brookside refused to meet with Ms. Southworth or accept an application from her. It is also undisputed that Ms. Southworth stood ready and willing to provide her tax returns and other financial information to Brookside.

The Mobile Home Park Residency Act provides that "approval" of a prospective purchaser of a mobile home who intends to become a resident may not be "unreasonably withheld." For Brookside to

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[3] See Appellant's Reply Brief at 20 (citing Estate of Morrison, 933 P.2d 1015 (Utah [Ct.] App. 1997)).

refuse to even meet with or accept an application from a prospective purchaser is "unreasonable" as a matter of law.

Brookside's actions in this case attempt to override the overall purpose of the Mobile Home Park Residency Act, which states:

> The fundamental right to own and protect land and to establish conditions for its use by others necessitate[s] that the owner of a mobile home park be provided with speedy and adequate remedies against those who abuse the terms of a tenancy. The high cost of moving mobile homes, the requirement of mobile home parks relating to their installation, and the cost of landscaping and lot preparation necessitate that the owners of mobile homes occupied within mobile home parks be provided with protection from actual or constructive eviction. It is the purpose of this chapter to provide protection for both the owners of mobile homes located in mobile home parks and . . . the owners of mobile home parks.

Utah Code Ann. § 57-16-2 (1994) (emphasis added.); see also Coleman v. Thomas, 2000 UT 53, ¶19, 398 Utah Adv. Rep. 12 (recognizing that the Mobile Home Park Residency Act serves the twofold purpose of protecting park residents and park owners). The Act specifically recognizes "the high cost of moving mobile homes." In this case, Brookside rejected Ms. Southworth, the third prospective purchaser who Peebles brought to the park. As a result, Sam Peebles lost a sale of his mobile home for $25,000

in September, 1996. (See Appellees' Brief at 10, line 36.) Sam Peebles continued to pay lot rent, even though the Mobile Home was vacant and Brookside had rejected three prospective purchasers, including Jackie Southworth.

Finally, in November, 1997, over one year after Ms. Southworth's rejection, the Mobile Home was finally sold and moved to Evanston, Wyoming at a net profit of $1,423.50. (Appellees' Brief at 11, line 43) (citation omitted).[4] This excludes the additional $3,177.00 in lot rent Sam Pebbles had to pay from October 25, 1996 through November 20, 1997.[5]

The prohibition against "unreasonably withholding" approval for applications for residency by prospective purchasers, which is set forth in section 57-16-4(4), was designed to protect mobile home owners from the "high cost" of arbitrary and capricious refusal by mobile home park owners such as Brookside. It cost Brookside so little to be reasonable. It cost Sam Peebles a great deal. Instead of selling his home for $25,000 in

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[4] Cf. Yee v. City of Escondido, 503 U.S. 519, 523 (1992) (stating that "[t]he term 'mobile home' is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself.").

[5] October 25, 1996 was the closing date under the Real Estate Purchase Contract between Peebles and Jackie Southworth (Trial Exhibit D-67.) November 20, 1997 was the day the Mobile Home was finally moved from the Park.

October, 1996, he had to move it to Evanston, Wyoming and sold it for a net profit of $1,422.50 in November, 1997, plus he had to continue to pay lot rent on space #100 from October, 1996 through November, 1997.

II. THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION FOR COSTS AND ATTORNEY'S FEES

The trial court erred in denying Defendants' Motion for Costs and Attorney's Fees. Section 57-16-8 of the Utah Code provides that "[i]f a resident elects to contest an eviction proceeding,...[t]he prevailing party is... entitled to court costs and reasonable attorney's fees." Utah Code Ann. § 57-16-8 (1994).

A. Peebles was a "resident" within the meaning of Section 57-16-8 because he "was an individual that leases or rents space in a mobile home park."

Section 57-16-3(3) defines "resident" as "an individual that leases or rents space in a mobile home park." In Brookside's Reply Brief, Brookside does not argue that Sam Peebles was not paying rent for space #100. In fact, Brookside's Exhibit A to its Reply Brief (when the omitted second page is included) makes that matter all the clearer. (Brookside's Exhibit A to its Reply Brief, with the omitted second page, is attached hereto as Appendice A.) After Peebles' sublessee, Richard Rowley, abandoned the Mobile Home, Sam Peebles made the following

payments to Brookside for space #100, prior to service of the 5-day Notice to Quit. The following information is taken from Brookside's own accounting ledger (attach as Appendice E to Appellees' Brief) and the omitted second page from Brookside's Exhibit A to its Reply Brief (attached hereto as Appendice A.):

Date	Amount
October 31, 1995	$591.00 (two months)
December 11, 1995	$215.00
January 3, 1996	$215.00
February 5, 1996	$215.00
March 5, 1996	$215.00
April 5, 1996	$235.00
May 5, 1996	$235.00

Thus, at the time the 5-Day Notice to Quit was served (August 10, 1996), Sam Peebles was current on rent for lot #100.[6] He had been paying monthly lot rent since October, 1995. Although the April 5, 1996 rent check was not cashed at that time because of the service of the eviction notice, it had nevertheless been tendered.

B. The Complaint seeking to evict Peebles was an "eviction proceeding" within the meaning of Section 57-16-8

Furthermore, this was clearly "an eviction proceeding"

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[6] Brookside did not cash the April 5, 1996 check or subsequent checks until Brookside and Peebles agreed in December, 1996, that Brookside could do so. Although the checks subsequent to May 5, 1996 are not listed above, it is undisputed that all rents due and owing Brookside while the Mobile Home occupied space #100 were paid by Peebles. (See Appellees' Brief at 12, paragraph 44.)

within the meaning of section 57-16-8. (Compare Appellees' Brief at 51-52, with Appellant's Reply Brief (providing no response to this point)).

Brookside's only argument that Peebles is not entitled to attorney's fees is that Peebles' argument for attorney's fees and Peebles' argument against Brookside's request for attorney's fees are inconsistent:

> In their brief the Peebles first argue in section IV of their brief that Brookside is not entitled to recovery of attorney's fees in defending against the Peebles counterclaim under the Mobile Home Park Residency Act because Brookside's eviction proceeded under the Unlawful Detainer Act. The Peebles then argue the opposite in section V of their brief that even though Brookside proceeded to evict the Peebles under the Unlawful Detainer Act, dismissal of such claim by the trial court results in recovery of their attorney's fees under the Mobile Home Park Residency Act.

(Appellant's Reply Brief at 20-21) (citations omitted). The foregoing is Brookside's entire argument against awarding Peebles his attorney's fees for successfully defending against the eviction action. This argument is flawed. As to the counterclaim, regardless of who the prevailing party is, there is no basis for the prevailing party to recover attorney's fees for the counterclaim. (See Appellees' Brief at 46-52.)

As to the complaint, under Brookside's eviction theory, Brookside is not entitled to attorney's fees if it prevails. Brookside argues that Sam Peebles was a "tenant at will" within

the meaning of the Unlawful Detainer Act. The Unlawful Detainer Act, however, does not include an attorney's fees clause. Therefore, if Brookside is successful in proving that Sam Peebles was a "tenant at will" under the Unlawful Detainer Act, there is no basis for Brookside to recover attorney's fees.

If Sam Peebles successfully defends against the Complaint, then Peebles is entitled to attorneys fees under Section 57-16-8 if he is a "resident" and if this is an "eviction proceeding." As discussed above, Sam Peebles is a "resident" within the meaning of section 57-16-8, and this is an "eviction proceeding." Since Peebles prevailed on the complaint below, the trial court errored in failing to award Peebles his attorneys fees under section 57-16-8.[7]

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[7] Although not required to recover attorneys fees, Peebles was also an "owner" of the Mobile Home. (See the title to the Mobile Home, attached as Appendice A to Appellees' Brief.) In Brookside's first brief, Brookside alleged that Peebles sold his mobile home to Richard Rowley. (See Appellant's Brief at 6 (stating that "[t]he Peebles then sold the home to Richard Rowley . . . ."). In Brookside's second brief, Brookside recanted that allegation, acknowledging that Peebles only rented his mobile home to Richard Rowley. (See Appellant's Reply Brief at 1 (stating that "the Peebles had rented the mobile home to Richard Rowley with an option to purchase . . . ."); id. at 2 (stating that "in renting their mobile home to Richard Rowley . . . . "). As reviewed in footnote 2, page 6 of Appellees' Brief, Sam Peebles never sold the Mobile Home to Richard Rowley. Peebles was always an owner of the mobile home. Alan Glover, owner of Brookside, acknowledged at trial that "Sam Peebles was in fact the owner of the home." (T. at 50, lines 4-5.) In approximately 1987, Peebles did sell the mobile home on an installment contract (without transferring title) to Bud Jones and Barbara Peacock,

CONCLUSION

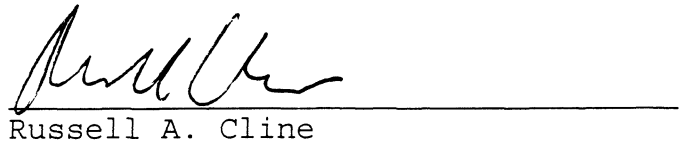
This Court should overturn the jury verdict and find that Brookside's refusal to meet with or even accept an application for residency from Ms. Southworth is a per se violation of section 57-16-4(4) of the Mobile Home Park Residency Act, which provides that approval of a prospective purchaser for residency may not be "unreasonably withheld."

This Court should reverse the trial court's denial of Defendants' Motion for Attorney's Fees for successfully defending the eviction action, and remand this case for a determination consistent therewith, including a determination of Defendants' attorney's fees on appeal for successfully defending on appeal the trial court's dismissal of the eviction action.

Finally, this Court should uphold the remainder of the Court's rulings in this case.

DATED this 31 day of July, 2000.

CRIPPEN & CLINE, L.C.



Russell A. Cline
Attorney for Appellees

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however, they defaulted after about 6 months and Sam Peebles took back the mobile home and signed a new lease with the Park. (Appellees' Brief at 6, lines 8-10) (citation omitted). Thereafter Peebles only subleased the mobile home.

Certificate of Service

I hereby certify that two true and correct copies of the foregoing Reply Brief of Appellees have been mailed postage pre-paid on this 31 day of July, 2000 to the following:

Dennis K. Poole
John L. Adams
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4543 South 700 East, Suite 200
Salt Lake City, Utah 84117
Attorneys for Appellant

By: 

APPENDICE A

(Exhibit A to Reply of Appellant,
with omitted second page)

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ATTORNEYS AT LAW

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ANDREA NUFFER GODFREY

4543 SOUTH 700 EAST, SUITE 200
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TELECOPIER (801) 263-1010

December 4, 1996

Mr. Russell A. Cline
CRIPPEN & CLINE
310 South Main, Suite 1200
Salt Lake City, Utah 84101

Re: Sam Peebles

Dear Mr. Cline:

This letter will confirm the stipulation made in Court this date that Brookside Mobile Home Park will negotiate the checks tendered by Mr. Peebles for monthly rent without prejudice to the rights of the parties.

I am enclosing herewith for your reference copies of the checks which we have been holding and which we are forwarding to Brookside to deposit. You should be aware that as of December 1, 1996 a total of $2,115.00 is due and owing for rent. After applying the checks we are holding, which total $1,370.00, there is a balance of $745.00. Unless we receive this amount in full within the next ten (10) days, we will file a Motion for Summary Judgment based upon the failure to pay the lot rental.

Thank you for your cooperation in this matter.

Very truly yours,

DENNIS K. POOLE

DKP:ec
Enc.
cc: Brookside Mobile Home Park, w/checks

cline3.LTR (dkp)

235• x
9• =
2,115• +

2,115• *

0• *

235• +
235• +
430• +
470• +
1,370• *

0• *

2,115• +
1,370• -
745• *

0• *

0• *

12668 SOUTH 2360 WEST 254-5010
RIVERTON, UTAH 84065

5100

31-1/1
1881167

DATE 4-5

PAY TO THE ORDER OF Brookside $ 235.00

Two hundred Thirty Five & 00 DOLLARS

First Security Bank
First Security Bank of Utah
1717 West 12600 South
Riverton, Utah 84065

Advantage

MEMO

⑆124000121⑆ 188 11679 18⑈ 5100

© DELUXE WALLET OR DUPLICATE ©

SAMUEL B. PEEBLES 12-89
NORINE H. PEEBLES
12067 SO 2240 W 254-5010
RIVERTON, UTAH 84065

31-1/1240
1881167918

5213

DATE 5-4

PAY TO THE ORDER OF Brookside $ 235.00

Two hundred Thirty Five & 00 DOLLARS

First Security Bank
First Security Bank of Utah
1717 West 12600 South
Riverton, Utah 84065

Advantage

MEMO

⑆124000121⑆ 188 11679 18⑈ 5213

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NORINE H. PEEBLES 4/96
SAMUEL B. PEEBLES
12067 SOUTH 2240 WEST 254-5010
RIVERTON, UT 84065

83-7962/3010
528783332

295

DATE 8/29/96

PAY TO THE ORDER OF Brookside Mobile Home Park $ 430.00

Four Hundred Thirty and no/100 DOLLARS

YELLOW FINANCIAL CREDIT UNION
PO Box 7890 Shawnee Mission, KS 66207 (800)-321 YFCU

MEMO Lot rent Norine H Peebles

⑆301079620⑆ 528783332⑈ 0295

NORINE PEEBLES 09-91
OR PAULA B. PRINCE
12067 S. 2240 W. 254-5010
RIVERTON, UT 84065

1798

97-10/1241

11/16 19 96

PAY TO THE ORDER OF Brookside Mobile Home Park $ 470.00

Four Hundred and no/100 DOLLARS

BANK of UTAH
MAIN BRANCH
2605 WASHINGTON BLVD
OGDEN, UTAH 84401

FOR Space #100 - 2 mos lot rent Norine Peebles

⑆124300107⑆ 0151 7112⑈ 1798